IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2007

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.26446 of 2006
(O.A.No.2256 of 1994)

S.Arunachalam ... Petitioner

Versus

1. The Secretary to Government,
State of Tamil Nadu,
Department of Education,
Fort St. George, Madras-9.

2. The District Educational Officer,
Devakottai, P.M.T. District.

3. The Assistant Educational Officer,
Thirupathur, P.M.T. District. ... Respondents

This petition came to be numbered by transfer of O.A.No.2256 of 1993 from the file of the Tamil Nadu Administrative Tribunal praying for Mandamus, directing the respondents to pay the petitioner all the monies flowing out of the benefits following the petitioner's appointment and regularisation as Peon in the respondents services from 22.03.1975 onwards till the date including the increments that have been due to the petitioner since 22.03.1975.
For Petitioner : Mr.P.L.Narayanan

For Respondents : Mrs.Lita Srinivasan,
Government Advocate
O R D E R
It is the case of the petitioner that he joined the service of the respondent as Watchman on 23.04.1993 and thereafter, he was promoted as Office Assistant by the District Educational Officer, Devakottai, the second respondent on 20.03.1975 and his services were regularised with effect from 22.03.1975. Subsequently, the petitioner was promoted as Record Clerk, vide order dated 22.07.1988. The petitioner has further submitted that prior to his promotion as Record Clerk, he was entitled to a basic pay of Rs.275/-, other benefits and allowances. While that be the position, by order dated 15.06.1983, the District Educational Officer, the second respondent, relying on G.O.Ms.No.2319, dated 23.10.1982, informed the petitioner that he was entitled only for a pay scale of Rs.250/- and fixed the basic pay at Rs.250/- and granted other benefits and allowances from 23.10.1982.

2. The petitioner has further submitted that eventhough G.O.Ms.2319, dated 23.10.1982, was quashed by the Tribunal in T.A.No.317 of 1989, the second respondent has chosen not to pay his salary, to which he is entitled. The petitioner has further submitted that his case is identical to that of his colleagues, viz., V.Ganapathi, applicant in T.A.No.317 of 1989 and S.Ramasamy, applicant in

T.A.No.417 of 1989. When the petitioner approached the second respondent seeking for monetary benefits, the second respondent assured him to provide all the attendant monetary benefits, as extended to his Collegues, V.Ganapathi and S.Ramasamy. As appropriate orders were not passed, fixing his scale of pay, the petitioner has preferred an Original Application before the Tamil Nadu Administrative Tribunal, which was subsequently transferred to this Court and renumbered as the present Writ Petition.

3. The respondents in their counter affidavit have submitted that the petitioner was appointed as contingent Watchman on 23.04.1973 and promoted as Office Assistant on 22.03.1975. His services as an Office Assistant were regularised with effect from 22.03.1975 by the second respondent. Periodical increments were given on 01.07.1976, 01.07.1977 and 01.07.1978 respectively. The Director of School Education made an objection to the promotion of the petitioner as Office Assistant from contingent watchman, as he has not fulfilled the requirement of completion of five years service in the contingent post and therefore, ordered to revert the petitioner as watchman and recover the excess pay and allowance paid to him in the post of Office Assistant. It is further stated in the counter affidavit that the Government in G.O.Ms.No.2319, Education, dated 23.10.1982, relaxed the relevant rules in favour of the petitioner and ordered to regularise his service only from the date of Government Order, i.e., 23.10.1982 only. The respondents have further submitted that the orders passed by the Administrative Tribunal in T.A.No.317 of 1989 in the case of Mr.Ganapathy for regularising his service from the date of his appointment as Office Assistant is not applicable to the case of the petitioner.

Heard the counsel appearing for the parties and perused the materials available on record.

4. In G.O.Ms.No.2319, Education, Science & Technology Department, dated 23.10.1982, the Government in exercise of their powers conferred under Rule 48 of the General Rules for the Tamil Nadu State and Subordinate Service contained in Part-II of the Tamil Nadu Services Manual, 1977, relaxed the rules relating to the method of recruitment, in favour of Tvl.S.R. PN.Ramalingam, K.Ganapathy, Ramasamy, v. Ganapathy and S.Arunachalam. Rules 4, 5(1) and 5(2) of the said rules relate to the method of recruitment age, educational qualification respectively. By the above said order, their services were regularised in the post of Office Assistant with effect from the date of order. The Government further instructed the Director of School Education, Chennai to cancel the earlier orders of regularisation and take disciplinary action against the officers, who were responsible for the irregular appointment and subsequent regularisation of the services of the petitioner along with two others, viz., V.Ganapathy and Ramasamy.

5. The above said Government Order was challenged by Ganapathy in T.A.No.317 of 1989 and the Tribunal, by order dated 17.10.1999, allowed the said application with a direction that,
"the applicant is entitled to continue as an office Assistant by virtue of his appointment, as early as on 1973 as a Record Clerk by virtue of his appointment on 07.11.1977 and all other benefits that follow such appointments including the increment which are said to have been due to him."

6. The order of the Tribunal made in T.A.No.317/89 is squarely applicable to the case of the petitioner, as he was also the one of the Record Clerks, regularised by the Government from the date of issue of G.O.Ms.No.2319, Education, Science & Technology Department, dated 23.10.1982. The direction granted by the Tribunal has to be applied to similarly placed persons and the respondents cannot apply a different yardstick in case of the petitioner, violating Article 14 of the Constitution of India. Therefore, the respondents ought to have extended the benefits enjoyed by other two individuals to the case of the petitioner.

7. In view of the above, a direction is issued to the respondents to pay all monetary benefits and

periodical increments, from the date of appointment of the petitioner as Office Assistant, within a period of six weeks from the date of receipt of a copy of this order. The petitioner is also entitled to the revision of pay and other benefits.

8. In the result, the Writ Petition is allowed. No costs.

26.09.2007
skm
To
1. The Secretary to Government,
State of Tamil Nadu,
Department of Education,
Fort St. George, Madras-9.

2. The District Educational Officer,
Devakottai, P.M.T. District.

3. The Assistant Educational Officer,
Thirupathur, P.M.T. District.

S. MANIKUMAR, J.

skm

W.P.No.26446 of 2006

26.09.2007